



DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-955]

Certain Magnesia Carbon Bricks from the People's Republic of China: 2010 Countervailing
Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain magnesia carbon bricks (MCBs) from the People's Republic of China (PRC), covering the period of review (POR) of August 2, 2010, through December 31, 2010. The Department has preliminarily applied adverse facts available (AFA) to the two mandatory respondents who both failed to cooperate to the best of their ability in this proceeding. The Department also intends to rescind the review of seven companies that certified that they had no shipments of subject merchandise to the United States during the POR.

DATES: Effective Date: [Insert date published in the Federal Register]

FOR FURTHER INFORMATION CONTACT: Toni Page or Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-1398 or (202) 482-0197, respectively.

Scope of the Order

The merchandise subject to the order includes certain magnesia carbon bricks. Certain magnesia carbon bricks that are the subject of this order are currently classifiable under subheadings 6902.10.1000, 6902.10.5000, 6815.91.0000, 6815.99.2000 and 6815.99.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in

Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order, 75 FR 57442 (September 21, 2010), remains dispositive.

Partial Rescission of the Administrative Review

On September 30, 2011, we received timely requests for an administrative review of this countervailing duty order from Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi), and U.S. importer Vesuvius USA Corporation for subject merchandise it imported from PRC exporter, Yingkou Bayuquan Refractories Co., Ltd. (BRC).¹ Also, on September 30, 2011, the Department received a timely request, in accordance with 19 CFR 351.213(b), for an administrative review of 129 companies from Resco Products, Inc. (Petitioner).² The Petitioner's request included Fengchi and BRC. On October 31, 2011, the Department published a notice of initiation of administrative review.³ Fengchi and BRC timely withdrew their self-request for reviews on January 27, 2012, and January 30, 2012, respectively.⁴ On February 21, 2012, we selected Fengchi and BRC as mandatory respondents in this review.⁵ Petitioner filed a letter on March 28, 2012, untimely

¹ See Letter to the Department from Fengchi "Certain Magnesia Carbon Bricks from the People's Republic of China: Request for Administrative Review of Countervailing Duty Order (8/2/10-12/31/10)" Re: Review Initiation Request, dated September 30, 2011; see also Letter to the Department from BRC "Certain Magnesia Carbon Bricks from the People's Republic of China: Request for Administrative Review of Countervailing Duty Order (8/2/10-12/31/10)," dated September 30, 2011.

² See Letter to the Department from Petitioner "Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Administrative Review" Re: Review Initiation Request, dated September 30, 2011.

³ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 76 FR 67133 (October 31, 2011) (Initiation Notice).

⁴ See Letter to the Department from Fengchi "Certain Magnesia Carbon Bricks from the People's Republic of China: Withdrawal of Request for CVD Administrative Review (08/02/10 — 12/31/10)," dated January 27, 2012; see also Letter to the Department from BRC "Certain Magnesia Carbon Bricks from the People's Republic of China: Withdrawal of Request for CVD Administrative Review (08/02/10 — 12/31/10)," dated January 30, 2012.

⁵ See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Administrative Review of the Countervailing Duty Order on Certain Magnesia Carbon Bricks (MCBs) from the People's Republic of China: Respondent Selection Memorandum," dated February 21, 2012.

withdrawing its request for all companies, except the two mandatory respondent companies (Fengchi and BRC), for which it requested reviews.⁶

Pursuant to section 351.213(d)(1) of the Department's regulations, a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review.⁷ The regulation provides that the Department may extend this time if it is reasonable to do so.⁸ In the Initiation Notice, interested parties were advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request.⁹ Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis. Because Petitioner did not demonstrate that extraordinary circumstances prevented it from timely withdrawing its requests for review, the Department has rejected Petitioner's untimely request for withdrawal.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective POR. In the Initiation Notice, the Department stated that any company named in the notice of initiation that had no exports, sales, or entries during the period of review should notify the Department within 60 days of publication of the notice in the Federal Register.¹⁰

⁶ See Letter to the Department from Petitioner "Administrative Review of Countervailing Duty Orders on Certain Magnesia Carbon Bricks from the People's Republic of China (8/2/2010-12/31/2010): Withdrawal of Request for Review," dated March 28, 2012.

⁷ See also Initiation Notice at 67133.

⁸ See 19 CFR 351.213(d)(1).

⁹ See Initiation Notice, 76 FR at 67133.

¹⁰ See Id.

The Department subsequently received timely no shipment certifications from the following companies: ANH (Xinyi) Refractories (ANH); RHI-Refractories Asia Pacific Pte. Ltd., RHI Refractories (Dalian) Co. Ltd., RHI Refractories Liaoning Co., Ltd., RHI Trading Shanghai Branch, and RHI Trading (Dalian) Co., Ltd. (RHI companies); Fengchi; and Yingkou New Century Refractories Ltd.(NCR).¹¹ With the exception of Fengchi, because there is no evidence on the record to indicate that these companies had sales of subject merchandise during the POR, pursuant to 19 CFR 351.213(d)(3), the Department intends to rescind the review with respect to ANH, the five RHI companies, and NCR. A final decision regarding whether to rescind the review with respect to these companies will be made in the final results of this review. Information on the record shows that Fengchi did have sales of subject merchandise during the POR.¹² Therefore, we are not rescinding the review with respect to Fengchi.

Methodology

The Department has conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs under review, we preliminarily determine that there are countervailable subsidies, i.e., there is a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific. See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity. In

¹¹ See Letter to the Department from ANH “Administrative Review of Countervailing Duty Order on Magnesia Carbon Bricks from the People’s Republic of China: Notification of No Shipments During the Period of Review,” dated November 29, 2011; see also Letter to the Department from RHI “Magnesia Carbon Bricks from China: Rebuttal Comments on CBP Data,” dated December 13, 2011; see also Letter to the Department from Fengchi “Certain Magnesia Carbon Bricks from the People’s Republic of China, Case No. C-570-955: Certification of No Shipments,” dated December 20, 2011; see also Letter to the Department from NCR “Administrative Review of Countervailing Duty Order on Magnesia Carbon Bricks from the People’s Republic of China: Notification of No Shipments During the Period of Review,” dated December 23, 2011.

¹² See Memorandum to the File “Certain Magnesia Carbon Bricks from the People’s Republic of China: Customs Data of U.S. Imports of Certain Magnesia Carbon Bricks,” dated November 22, 2011.

making these findings, we have relied on adverse facts available for the two mandatory respondents because these respondents did not act to the best of their ability to respond to the Department's requests for information; as such, we have drawn an adverse inference in selecting from among the facts otherwise available. See sections 776(a) and (b) of the Act. With respect to the remaining companies for which we initiated reviews and that did not file no-shipment certifications, we will assign to entries made by such companies the all-others rate from the investigation. Accordingly, and consistent with section 705(c)(5)(A)(ii), we have relied upon the all-others rate from the investigation because the rates calculated for mandatory respondents in the preliminary results of this review are based entirely upon facts available. We consider the use of the all-others rate from the investigation, which was based upon a calculated rate for one of the mandatory respondents in the investigation, to be a "reasonable method" for calculating the all-others rate because it represents the only rate in the history of the CVD order on MCBs from the PRC that is not zero, de minimis, or based entirely upon facts available.

For a full description of the methodology underlying our conclusions, please see "Decision Memorandum for Preliminary Results for the Countervailing Duty Administrative Review of Certain Magnesia Carbon Bricks from the People's Republic of China," (Preliminary Decision Memorandum) to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In

addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period August 2, 2010, through December 31, 2010:

Company	<u>Ad Valorem</u> Net Subsidy Rate
Fengchi Imp. and Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (collectively, Fengchi)	262.80 percent
Yingkou Bayuquan Refractories Co. Ltd.	262.80 percent
All Others Rate Applicable to the Remaining Companies Under Review	24.24 percent

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.¹³ Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, unless otherwise notified by the Department.¹⁴ Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁵

¹³ See 19 CFR 351.224(b).

¹⁴ See 19 CFR 351.309(c)(1)(ii).

¹⁵ See 19 CFR 351.309(c)(2), (d)(2).

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.¹⁶ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.¹⁷ Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Assessment Rates & Cash Deposit Requirements

In accordance with 19 CFR 351.221(b)(4)(i), we assigned a subsidy rate for each producer/exporter subject to this administrative review. Upon issuing the final results of the review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review if any individual assessment rate calculated in the final results of this review is above de minimis. For the

¹⁶ See 19 CFR 351.310(c).

¹⁷ See 19 CFR 351.310.

companies that certified no shipments, the Department will instruct CBP to assess countervailing duties at the rate entered. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, the Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at the rate of 262.80 percent ad valorem of the entered value on shipments of the subject merchandise produced and exported by Fengchi and BRC, and entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. Furthermore, for the remaining companies subject to this review, the cash deposit rate will be the all others rate from the investigation. We intend to instruct CBP to continue to collect cash deposits for non-reviewed companies at the applicable company-specific countervailing duty rate for the most recent period or at the all-others rate established in the investigation, as appropriate. These deposit rates, when imposed, shall remain in effect until further notice.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Paul Piquado
Assistant Secretary
for Import Administration

October 1, 2012
Date

APPENDIX I

List of Topics Discussed in the Decision Memorandum for Preliminary Results

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
5. Conclusion

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